

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DILANG N DAT,
Petitioner,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT, et al.,
Respondents.

NO. 2:19-cv-1181-BJR

ORDER RE: REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge Brian A. Tsuchida.¹ The R&R recommends transfer of this matter—a petition for writ of habeas corpus filed by Petitioner Dilang Dat under 28 U.S.C. § 2241—to the U.S. District Court for the District of Nebraska. The R&R is a *sua sponte* response to Petitioner’s transfer from the Federal Detention Center in Seatac, Washington, to the

¹ The factual background of this case is laid out in greater detail in the Order Re: Report and Recommendation, Dkt. No. 8. In summary, Petitioner was born in a Kenyan refugee camp to parents who had fled Sudan, and entered the U.S. as a minor child. Mem. in Supp. of Pet., Dkt. No. 3-2, at 1. In 2016, in the U.S. District Court for the District of Nebraska, Petitioner pleaded guilty to felony robbery. Ex. To Pet., Dkt. Not. 3-1, p. 4. Based on his conviction, Petitioner became the subject of an “Immigration Detainer—Notice of Action,” which noted that the Department of Homeland Security has probable cause to believe that Petitioner is a removable alien. The Detainer directed authorities to notify U.S. Immigration and Customs Enforcement before releasing Petitioner from custody.

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1 Douglas County Department of Corrections in Omaha, Nebraska. Although Petitioner was
2 in custody within the Western District of Washington when he filed his §2241 petition on
3 August 27, 2019, he was transferred to Nebraska in early September, 2019. *See* Notice of
4 Change of Address, Dkt. No. 5. Petitioner was apparently temporarily transferred to
5 Nebraska pursuant to a writ of habeas corpus ad testificandum, to testify in an evidentiary
6 hearing on another habeas petition. That petition was filed in Nebraska under 28 U.S.C.
7 § 2255, challenging his conviction. *Id.*

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9 The R&R recommends transfer to Nebraska because a habeas petition filed under
10 § 2241 challenging the conditions of confinement should be heard in the judicial district in
11 which the petitioner is detained. *Hernandez v. Campbell*, 204 F.3d 861, 865 (9th Cir. 1999)
12 (per curiam) (“a habeas petition filed pursuant to § 2241 must be heard in the custodial
13 court”). However, a temporary transfer of a petitioner out of that original judicial district,
14 pursuant to a writ ad testificandum, does not confer jurisdiction on the court sitting in the
15 district to which the petitioner is transferred. *See Miller v. Hambrick*, 905 F.2d 259, 262
16 (9th Cir. 1990)(“The writ [ad testificandum] authorizes a trip not a change of custodians.”).

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18 Transfer of this matter to the district court in Nebraska is inappropriate for another
19 reason. After the R&R was entered, Petitioner was apparently transferred to the
20 Leavenworth Detention Center in Leavenworth Kansas, and later to the Chase County
21 Detention Facility in Cottonwood Falls, Kansas. *See* Dkts. No. 14 and 15. Petitioner,
22 having completed his sentence for his original conviction, has apparently been released
23 from Federal Bureau of Prisons custody, into the custody of U.S. Immigration and Customs
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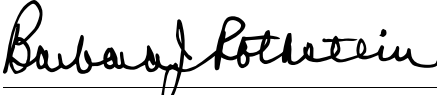
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1 Enforcement. It appears that his petition, which challenges the conditions of confinement
2 with the Federal Bureau of Prisons, may therefore be moot.

3 For the foregoing reasons, the Court hereby declines to adopt the R&R.
4 Furthermore, the Court orders the Petitioner to show cause why this matter should not be
5 dismissed as moot. Petitioner may file a response to this Order, no later than 21 days after
6 entry of this order.
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8 This matter is remanded to the Magistrate Judge for further proceedings.

9 DATED this 25th day of March, 2020.

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13 Barbara Jacobs Rothstein
14 U.S. District Court Judge
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